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Repository Citation

Lucie R. Kantrow, *Presumption Junction: Honey, You Weren't Part of the Function - A Louisiana Mother's New Right to Contest Her Husband's Paternity*, 67 La. L. Rev. (2007)
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Presumption Junction: Honey, You Weren't Part of the Function¹—A Louisiana Mother's New Right to Contest Her Husband's Paternity

I. INTRODUCTION

In the midst of a divorce, Kassie Cravens sought to prove that Chad, her soon-to-be ex-husband, was not the father of Jon Michael Cravens, her three-year-old son, born during the first few months of their marriage. Aware that the child's biological father desired no relationship with Jon Michael, she had refrained from filing any previous paternity action. Now though, as Mr. Cravens sued her for a divorce, seeking interim alimony and permanent legal custody of Jon Michael, she counterclaimed for custody, challenging his paternity. The trial court granted her motion for a DNA test and Mr. Cravens obliged with a sample. As Mrs. Cravens expected, the DNA results admitted into evidence did in fact exclude him as the child's biological father. But in seeking custody, Mr. Cravens maintained his status as Jon Michael's legal father. Mrs. Cravens conceded not only that Mr. Cravens was a good father, but also that it would not be in Jon Michael's best interests to sever their relationship. Entering a final divorce judgment and awarding the Cravens joint legal and physical custody, the trial court declined to hold that the DNA evidence rebutted the presumption under Alabama statutory law² that Mr. Cravens, Mrs. Cravens's husband at the time of Jon Michael's birth, was the child's father.

The appellate court rejected Mrs. Cravens's arguments that she had standing to challenge Mr. Cravens's paternity and that the trial court erred in holding the marital presumption of paternity irrebuttable despite DNA evidence to the contrary. Because Mr.

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1. Title inspired by Schoolhouse Rock: *Conjunction Junction* (ABC Television 1973). The title was originally suggested, in part, by B.R. Layfield.

2. ALA. CODE § 26-17-5(a)(1) (LexisNexis Supp. 2004) ("A man is presumed to be the natural father of a child if . . . [h]e and the child's natural mother are or have been married to each other and the child is born during the marriage . . .").

Cravens "persisted in asserting his paternity," the court said Mrs. Cravens lacked standing to challenge such paternity.³

Such were the facts of a recent Alabama case.⁴ The Alabama Court of Civil Appeals affirmed the holding that a *presumption of paternity*, persistently asserted by the presumed father, outweighed scientific evidence demonstrating a high probability that Mr. Cravens was not Jon Michael's biological father.⁵ Considering the outcome in light of its social and legal ramifications, an illogical consequence of the decision is apparent. While the decision protects the child from being deprived of a legal father, the court held that a mother lacked standing to challenge the presumption of paternity, despite scientific evidence disproving it. A husband can render the presumption irrebuttable simply by his act of will, i.e., by *persisting in asserting it*. What makes the decision of the Alabama court significant is that it prohibits a wife, the mother of a child born during marriage, from severing the child's legal relationship with her husband.

The effect of such a decision in a Louisiana court would mean that Mr. Cravens will pay child support until Jon Michael reaches eighteen,⁶ with corresponding custody and visitation rights,⁷ which are entitled to constitutional protection.⁸ His authority as father will be subject, of course, to the limitations of the custody order, but he can continually, as the mother may, have the order modified.⁹ If Mrs. Cravens remarries, her new husband will need Mr. Cravens's consent to adopt.¹⁰ Additionally, the obligation that Mr. Cravens has as the father to support Jon Michael beyond the age of eighteen, although diminished, would continue until his

3. Cravens v. Cravens, No. 2040004, 2005 Ala. Civ. App. LEXIS 523, at *7 (Ala. Civ. App. Sept. 9, 2005), *reh'g overruled*, 2005 Ala. Civ. App. LEXIS 771 (Ala. Civ. App. Dec. 16, 2005).

4. *Id.*

5. *Id.*

6. LA. CIV. CODE ANN. art. 141 (2006); *see also* LA. CIV. CODE ANN. art. 229 (2006) (requiring parents to "maintain their needy descendants").

7. LA. CIV. CODE ANN. arts. 131, 132, 136 (2006).

8. *See* Troxel v. Granville, 530 U.S. 57, 65 (2000) (discussing the parental right "to direct the upbringing" of children).

9. Either parent could attempt to effect a change of custody.

10. LA. CIV. CODE ANN. art. 214 (2006); LA. CHILD. CODE ANN. art. 1244 (2006).

death; Jon Michael, too, has such an obligation to his father.¹¹ Furthermore, in Louisiana, Jon Michael would not only be an intestate heir¹² of his father, but also a forced heir,¹³ entitled to a reserved portion of Mr. Cravens's estate until his twenty-third birthday,¹⁴ despite any will or testament of Mr. Cravens to the contrary. The decision demonstrates that one's inability to contest paternity, as well as any judgment concerning it, is an issue of enormous importance, with lifelong ramifications for Mr. and Mrs. Cravens and Jon Michael.¹⁵

Indeed, had the Cravens' divorce proceedings instead unfolded in a Louisiana court, the court would have reached a similar result, for until the summer of 2005, a mother had no legal right to challenge the marital presumption. However, as a part of the comprehensive revision of the laws on filiation passed in 2005,¹⁶ a revision significant in itself, the Louisiana Legislature created a mother's right to contest and establish the paternity of her child.¹⁷ It has thus provided a mother with a means, albeit limited, of rebutting the marital presumption.¹⁸ This in turn affects the legal rights and obligations of both the wife's former husband and the child. In the official comments to the new articles, the legislature asserts that the purpose of the new right is to align the child biologically within a married, intact family.¹⁹ But, given the requirements of the new contestation action, Mrs. Cravens's

11. LA. CIV. CODE ANN. art. 229 (2006).

12. LA. CIV. CODE ANN. art. 888 (2006). Mr. Cravens is likewise a factor in the devolution of Jon Michael's estate. LA. CIV. CODE ANN. art. 891 (2006).

13. LA. CIV. CODE ANN. art. 1493 (2006).

14. The only category of children who can be forced heirs beyond twenty-three are those who "because of mental incapacity or physical infirmity, are rendered permanently incapable of caring for themselves or administering their estates at the time of the decedent's death." *Id.*

15. See LA. CIV. CODE ANN. art. 197 cmt. (a) (2006) ("If the child establishes paternity under this Article, all of the civil effects of filiation apply to both the child and the father. Civil effects of filiation include the right to support, to inherit intestate, and to sue for wrongful death.").

16. 2005 La. Acts No. 192, § 1.

17. LA. CIV. CODE ANN. art. 191 (2006).

18. LA. CIV. CODE ANN. art. 185 (2006) ("The husband of the mother is presumed to be father of a child born during the marriage . . .").

19. LA. CIV. CODE ANN. art. 185 cmt. (b) (2006).

fortune in a Louisiana court would ultimately be the same, though not for the same lack of standing as in Alabama.

With the facts and fate of the Alabama case in mind, this comment focuses on Louisiana's new legislation affording a mother the right to contest and establish the paternity of her child. It strives to explicate the laws in a manner sufficient to reveal their origin, meaning, and impact on a similar situation. Part II of this comment provides an historical background on the marital presumption found in Louisiana's pre-existing filiation law and the heretofore limited, but incrementally expanding, means of rebutting that presumption. This exegesis will highlight the novelty of the mother's right. Part III explores the purpose of the new law by comparing foreign and domestic sources containing a similar right, some of which are more permissive and others more restrictive than Louisiana's. Part IV examines new Louisiana Civil Code articles 191 through 194, looking in detail at the statutory requirements of a mother's contestation action. It also anticipates that the interpretation of some requirements of the new articles—the burden of proof, authentic act, and evidentiary standard—may undermine the intended rigidity of their application, but will still serve the purpose of aligning the child within an intact family. Part V assesses how the new law, a right provided to the mother, accomplishes its inherent objective of serving the best interests of the child. Finally, Part VI concludes by reiterating that, although article 191 is pioneering and positive in the legal capability it affords a mother, her ability to act is intended to be a limited one for the sake of the child.

II. BACKGROUND: REBUTTING THE MARITAL PRESUMPTION PRIOR TO 2005

Legal filiation is the fact of biological parentage.²⁰ To establish filiation, or paternity, as it is called from the father's

20. Succession of Robinson, 654 So. 2d 682, 684 (La. 1995). Filiation is defined as the "fact or condition of being a son or daughter." BLACK'S LAW DICTIONARY 661 (8th ed. 2004). Biological filiation is established by blood; adoption is a substitute for biological filiation. See LA. CIV. CODE ANN. art. 214 (2006).

perspective, is to demonstrate a biological connection.²¹ As noted, the significance of determining filiation lies in accompanying rights and obligations.²² Before undergoing a revision in the summer of 2005,²³ Louisiana's law on filiation consisted of Civil Code articles 178 through 211.²⁴ Of relevance in this comment are the articles providing for the presumption of paternity²⁵ and the restricted means by which a husband or his heirs or legatees could rebut the presumption and disavow²⁶ a child, in effect severing any legal recognition of a biological tie, as well as all related rights and obligations between a father and child.²⁷

Historically, a child born out of wedlock had few, if any, rights and obligations with respect to his mother and father.²⁸ If legitimate—born of the marriage—the child enjoyed complete protection afforded by the rights and obligations confined to the marital family.²⁹ Thus, the pre-existing filiation articles and

21. Katherine Shaw Spaht & William Marshall Shaw, Jr., *The Strongest Presumption Challenged: Speculations on Warren v. Richard and Succession of Mitchell*, 37 LA. L. REV. 59, 63 (1976).

22. Helen Scott Johnson, *Louisiana's Presumption of Paternity: The Bastardized Issue*, 40 LA. L. REV. 1024, 1025 (1980) ("Filiation . . . establishes from whom the child derives certain rights and to whom the child owes specific obligations.").

23. This was part and parcel of the continuous revision of the Louisiana Civil Code undertaken by the Louisiana State Law Institute. See generally Louisiana State Law Institute, The LSLI Philosophy and Purpose, http://www.lsl.org/philosophy_and_purpose.htm (last visited Aug. 21, 2006).

24. The articles now number 184 through 198. 2005 La. Acts No. 192, § 1.

25. "A child born less than three hundred days after the dissolution of the marriage is presumed to have been conceived during the marriage. A child born three hundred days or more after the dissolution of the marriage is not presumed to be the child of the husband." LA. CIV. CODE ANN. art. 185 (2004), amended by 2005 La. Acts No. 192, § 1.

26. To disavow means "[t]o disown; to disclaim knowledge of." BLACK'S LAW DICTIONARY 495 (8th ed. 2004).

27. LA. CIV. CODE ANN. arts. 187–189 (2004).

28. "Illegitimate children, though duly acknowledged, can not claim the rights of legitimate children." LA. CIV. CODE ANN. art. 206 (1972), repealed by 1983 La. Acts No. 431, § 1.

29. LA. CIV. CODE ANN. art. 227 (1972) ("Fathers and mothers, by the very act of marrying, contract together the obligation of supporting, maintaining, and educating their children."), and LA. CIV. CODE ANN. art. 902 (1972), amended *sub nom* LA. CIV. CODE ANN. art. 888 by 1981 La. Acts No. 919, § 1

related provisions were principally geared towards privileging the family unit anchored in marriage. One of the means of privileging marriage over other intimate relationships was to favor the husband as father of the child through a presumption of paternity. The law reflected confidence that because only spouses owe each other the legal obligation of fidelity—to refrain from sexual intercourse with another and to satisfy the reasonable sexual desires of the other spouse³⁰—they did in fact honor these obligations. As a consequence, the presumption of the husband's paternity represented a reasonable assumption about the biological paternity of a child conceived or born during marriage.³¹

Jurisprudence attests that legislative and judicial concern in formulating and applying the filiation articles has long centered on the interests of the child. Rigorous application of the marital presumption in Louisiana demonstrated a judicial intent to avoid burdening children with the social and legal stigmas that accompany illegitimacy.³² Interpreting the legislation, courts have cited public policy concerns of "protect[ing] innocent children against attacks upon their paternity,"³³ and "against bastardizing the innocent child,"³⁴ as well as, historically, of maintaining and protecting the "legitimate" family unit.³⁵

("Legitimate children or their descendants inherit from their father and mother, grandfathers or other ascendants They inherit in equal portions and by heads, when they are in the same degree, and inherit by their own right").

30. LA. CIV. CODE ANN. art. 98 cmt. (b) (2006) (citing *Mudd v. Mudd*, 20 So. 2d 311 (La. 1944); *Favrot v. Barnes*, 332 So. 2d 873 (La. App. 4th Cir.), *writ denied*, 334 So. 2d 436 (La.), *rev'd on other grounds*, 339 So. 2d 843 (La.), *cert. denied*, 429 U.S. 961 (1976); *Phillpott v. Phillpott*, 285 So. 2d 570 (La. App. 4th Cir. 1973), *writ refused*, 288 So. 2d 643 (La. 1974)).

31. "The husband of the mother is presumed to be the father of all children born or conceived during the marriage." LA. CIV. CODE ANN. art. 184 (2004), *amended sub nom* LA. CIV. CODE ANN. art. 185 by 2005 La. Acts No. 192, § 1.

32. *Smith v. Cole*, 553 So. 2d 847, 849 (La. 1989).

33. *Id.* at 850.

34. *Mock v. Mock*, 411 So. 2d 1063, 1064 (La. 1982).

35. *Pounds v. Schori*, 377 So. 2d 1195, 1200 (La. 1979) ("Our jurisprudence reflects unwavering dedication to the rule of strict construction of the articles governing disavowal actions. The fundamental end achieved thereby is, of course, preservation of the family unit, the foundation of our society. Further

But rigorous application of the presumption, considered so strong that it was difficult, if not virtually impossible, to rebut, often resulted in absurd judicial decisions. In an effort to protect children legally and socially from stigma, courts deemed them legitimate despite strong, compelling evidence to the contrary. For instance, *Succession of Saloy*³⁶ involved claimants whose status as legal heirs of a widow was challenged because of the widow's own status as an "adulterous bastard."³⁷ The Louisiana Supreme Court paid little heed to the fact that the putative heirs *presented themselves* as children not of the widow's husband, but of a man with whom she had an affair while still married. Finding the claimants to be legal heirs, the court stated that the "sanctity with which the law surrounds marital relations and the reputation and good fame . . . of the children born during their marriage is of such inviolability that . . . children can never brand themselves with declarations of adultery, illegitimacy, and bastardy . . ."³⁸

*Succession of Mitchell*³⁹ concerned succession rights of children born of a woman and her brother-in-law, her husband having disappeared shortly after marriage.⁴⁰ Though born years after his disappearance, because the marriage had not been dissolved, the missing husband was *presumed* to be the children's legal father.⁴¹ The Louisiana Supreme Court noted that prior jurisprudence obliged the trial court to recognize the husband as the legal father, despite no evidence as to his whereabouts or existence at the time the children were born.⁴² Regardless of the "obvious fact" of the biological father's paternity, his acknowledgment of the children, and his subsequent marriage to the mother, "the law has made it impossible for this trial court to

considerations are the stigma of illegitimacy and resultant disinherison attendance upon a successful disavowal action.").

36. 10 So. 872 (La. 1892).

37. *Id.*; see also LA. CIV. CODE ANN. art. 182 (1885), *repealed by* 1979 La. Acts No. 607, § 4.

38. *Succession of Saloy*, 10 So. at 876.

39. 323 So. 2d 451 (La. 1975).

40. *Id.* at 452.

41. *Id.*

42. *Id.* at 453.

do what justice and common sense demand.”⁴³ The lower court had thus found them to be the legitimate children of the missing first husband. But referencing certain decisions criticized for “their inflexible, unrealistic, and unjust application of the presumption of paternity,” the supreme court reversed, instead finding the children legitimated by the subsequent marriage of their mother and biological father.⁴⁴

In addition to judicial cognizance that stringent application of the presumption could lead to illogical results,⁴⁵ the adoption of an equal protection clause in the state constitution⁴⁶ gave the Louisiana State Law Institute an opportunity to recommend relaxing the rigidity of the presumption, if not eliminate it entirely.⁴⁷ The Louisiana Legislature responded in 1976 with codal amendments rendering then-article 184’s virtually irrebuttable presumption of paternity rebuttable, though, at the

43. *Id.*

44. *Id.* at 456–57.

45. *Smith v. Cole*, 553 So. 2d 847, 850 (La. 1989) (“The Article 184 presumption was not without flaws. While it promoted the policy against bastardizing children, it often failed to conform with reality. A husband, who could not possibly be or who clearly was not the biological father, was nonetheless conclusively presumed to be so.”). The Alabama case, *Cravens v. Cravens*, No. 2040004, 2005 Ala. Civ. App. LEXIS 523, at *7 (Ala. Civ. App. Sept. 9, 2005), *reh’g overruled*, 2005 Ala. Civ. App. LEXIS 771 (Ala. Civ. App. Dec. 16, 2005), is further evidence of the confounding implications of an irrebuttable presumption. There, Mrs. Cravens was unable to sever Jon Michael’s relationship with her husband because he, as the presumed father, chose to maintain his paternity, despite scientific evidence undermining it. *Id.* As noted, the effects of the decision are lifelong consequences for all three Cravens. The *Smith* court also cited *Succession of Mitchell*, 323 So. 2d at 456, which noted appellate decisions critical of “inflexible, unrealistic and unjust application of the presumption of paternity to one born during an undissolved marriage, where the mates have long since been living separate and apart and where the mother has been living in stable union with another, who is the actual biological father of the children.”

46. *Smith*, 553 So. 2d at 850 n.4 (citing LA. CONST. of 1973, art. I, § 3 (“No person shall be denied the equal protection of the laws No law shall arbitrarily, capriciously, or unreasonably discriminate against a person because of birth, age, sex, culture, physical condition, or political ideas or affiliations.”)). That provision partially protects children from discrimination because of their illegitimacy of birth. *Id.*

47. *Id.* at 850.

time, still only by the husband or his heirs.⁴⁸ Subsequent decisions of both the United States Supreme Court⁴⁹ and the Louisiana Supreme Court⁵⁰ held that illegitimate children were no longer permitted to be victims of discrimination. Indeed, they were entitled to the constitutional protections and rights afforded to legitimate children. Courts no longer needed to overlook facts and common sense in order to find clearly illegitimate children legitimate for their own sakes. Illegitimate status no longer precluded legal protection of children. As a consequence, the challenge of rebutting a presumption long revered as nearly irrefutable became less daunting.

To defeat the marital presumption, often referred to as the "strongest presumption in the law,"⁵¹ a husband⁵² or his heirs or legatees⁵³ could, and still may, institute a disavowal action to disavow paternity. Historically, the husband had to file the paternity suit within one month of learning of the birth of the child.⁵⁴ This time period has been incrementally liberalized over the years, reflected in temporal requirements that have grown longer and subject to exceptions and peremptive periods that have become prescriptive periods.⁵⁵ Before the 2005 revision, the

48. 1976 La. Acts No. 430, § 1.

49. *Trimble v. Gordon*, 430 U.S. 762 (1977) (holding unconstitutional an Illinois Probate Act allowing illegitimate children to inherit by intestate succession only from their mothers, while simultaneously allowing legitimate children to inherit by intestate succession from both parents).

50. *Succession of Brown*, 388 So. 2d 1151, 1154 (1980) ("The members of the constitutional convention intended this article to include within its scope unreasonable discrimination based upon illegitimacy The distinction drawn by art. 919 between these acknowledged illegitimates and all other relations of the decedent is arbitrary, capricious, and unreasonable. This conclusion . . . is but a further extension of a line of judicial determinations striking down Louisiana laws which discriminate unconstitutionally against illegitimates.").

51. *Mock v. Mock*, 411 So. 2d 1063, 1064 (La. 1982).

52. LA. CIV. CODE ANN. art. 187 (2006).

53. LA. CIV. CODE ANN. art. 190 (2006).

54. LA. CIV. CODE ANN. art. 191 (1885), *repealed by* 1976 La. Acts No. 430, § 2. Prior to repeal, article 191 was amended by 1968 La. Acts No. 158, § 1.

55. LA. CIV. CODE ANN. art. 189 (2006). In 1999, an especially liberalizing provision was added, suspending the time limit for a husband's disavowal action. 1999 La. Acts No. 790, § 1. If the husband lived separate and apart from the mother continuously during the three hundred days immediately

husband had to file the suit within one year of learning, or from when he should have learned, of the birth of the child.⁵⁶ This time period was arguably peremptive; thus, a presumed father who failed to bring a timely action lost his right.⁵⁷ Since the late 1990s, the so-called peremptive time period⁵⁸ was subject to "suspension" if a husband lived continuously separate and apart from the mother during the three hundred days preceding the child's birth.⁵⁹

In either situation, the evidentiary standard required the husband to establish by a preponderance of the evidence facts reasonably indicating that he was not the child's father.⁶⁰ Moreover, it was necessary that the facts be susceptible of independent verification or corroboration by physical data or evidence, and the legislation specifically listed scientific tests and verifiable physical circumstances of remoteness as examples.⁶¹ In *Mock v. Mock*,⁶² the Louisiana Supreme Court extensively

preceding the birth of the child, prescription does not commence running "until the husband is notified in writing that a party in interest has asserted that the husband is the father of the child." *Id.* Due to the 2005 legislation, the time period is now prescriptive, subject to both suspension and interruption: 2005 La. Acts No. 192, § 1.

56. LA. CIV. CODE ANN. art. 189 (2004), *amended by* 2005 La. Acts No. 192, § 1. Under the 2005 revision, however, the action is subject to a liberative prescription of one year, commencing to run from the day the husband learns or should have learned of the child's birth. LA. CIV. CODE ANN. art. 189 (2006). Additionally, prescription does not begin to run until the husband receives written notification that a party has asserted that he is the father of the child if he lived continuously separate and apart from the mother during the three hundred days preceding the child's birth. *Id.* Comment (a) to new article 189 describes the period of time for a disavowal action as "explicitly prescriptive"; as such, former judicial interpretations of it as peremptive no longer stand. LA. CIV. CODE ANN. art. 189 cmt. (a) (2006).

57. *Pounds v. Schori*, 377 So. 2d 1195, 1198 (La. 1980).

58. LA. CIV. CODE ANN. art. 3458 (2006). Peremption is not subject to suspension or interruption. LA. CIV. CODE ANN. art. 3458 cmt. (b) (2006) ("Liberative prescription merely prevents the enforcement of a right by action; in contrast, peremption destroys the right itself.").

59. See sources cited *supra* notes 54-55 and accompanying text.

60. LA. CIV. CODE ANN. art. 187 (2004), *amended by* 2005 La. Acts No. 192, § 1.

61. *Id.*

62. 411 So. 2d 1063 (La. 1982).

discussed legislative intent as to the character of evidence necessary to meet this standard. Finding testimony alone insufficient to meet the required standard, the court highlighted the significance of putting forth *facts* disproving paternity. The standard, said the court, “accomplishes the Legislative objective of allowing the husband to disavow a child born to his wife where it is clear that he is not the father, while retaining the public policy against bastardizing the innocent child.”⁶³

No longer as difficult to rebut as it once was, the presumption still remains reasonable considering the duty of fidelity undertaken by spouses. As a result of the presumption, more children are considered legitimate, and a societal interest in “promoting whole, stable families based on legitimate family ties” is furthered.⁶⁴

III. INTRODUCING ARTICLE 191: A MOTHER’S PATERNITY ACTION

Article 191. Contestation and establishment of paternity by mother

The mother of a child may institute an action to establish both that her former husband is not the father of the child and that her present husband is the father. This action may be instituted only if the present husband has acknowledged the child by authentic act or by signing the birth certificate.⁶⁵

The provision of another means of rebutting the marital presumption—for the first time via a *mother’s* action—constitutes a dramatic element of the 2005 revision. Though drafts of article 191 date back at least ten years,⁶⁶ aside from its temporal requirement, its language has changed little over the years. This signals that, from its inception, the article’s purpose has been well-understood. Its significance and impact is tempered, however, by the elements required to be proven by a mother to establish a cause

63. *Id.* at 1066.

64. Johnson, *supra* note 22, at 1026.

65. LA. CIV. CODE ANN. art. 191 (2006).

66. Louisiana State Law Institute, Proposed Revision of the Louisiana Civil Code of 1870, Marriage-Persons Committee 8 (Katherine S. Spaht, reporter) (Aug. 25, 1995) (originally drafted as article 190).

of action under article 191 and the demands made of her to attain a judgment.

Article 191 provides a mother with a “contestation” action, not a disavowal action.⁶⁷ Though it may at first seem to threaten the privileged family unit and the child in question, the mother’s new right does just the opposite. The right belongs to her, but focuses, as reflected in the strict requirements to succeed in an action, upon legally establishing the child as a member of an intact family of his biological parents, evidenced by marriage.⁶⁸ The right thus enables a mother to provide *for* her child. It should be considered in this light, rather than as a means by which she disrupts stability afforded by law to the child through filiation to a presumed father.

A. Comparative Sources of a Similar Right: Foreign Civil Code Jurisdictions

New article 191 finds cousins in the legislation of other civil code jurisdictions,⁶⁹ but the restrictions on a mother’s right, indicative of concern for whether the child is ultimately filiated at all to a father, vary among countries. The provisions of many jurisdictions appear far less restrictive than Louisiana’s, involving no requirement that a challenge to paternity of a presumed husband be accompanied by an establishment of paternity, regardless of who asserts the challenge. The Belgian⁷⁰ and German⁷¹ Civil Codes allow the husband, the mother, and the child to contest the presumption of paternity. Italy’s Civil Code provision states that in all cases in which the father can exercise an “action of disrecognition,” so can the mother and the child, though the child can only act when a major.⁷² Portugal, in addition to allowing the husband, mother, or child to contest paternity, authorizes the

67. The contestation action requires that a mother simultaneously establish paternity elsewhere; a disavowal action does not. LA. CIV. CODE ANN. art. 192 cmt. (2006).

68. LA. CIV. CODE ANN. art. 191 cmt. (b) (2006).

69. LA. CIV. CODE ANN. art. 191 cmt. (a) (2006).

70. CIV. CODE art. 332, ¶ 1 (Belg.) (J.-R. Trahan, trans.), available at <http://lexinter.net/LOTWVers4/CCIVB/index.htm>.

71. Bürgerliches Gesetzbuch [BGB] [Civil Code] § 1600 (F.R.G.) (J.-R. Trahan, trans.).

72. CODICE CIVILE [C.C.] art. 235, ¶ 6 (Italy) (J.-R. Trahan, trans.).

Public Minister to institute an action.⁷³ Perhaps the broadest codal provision belongs to Quebec, which allows “any interested party” to contest filiation, thus implying that both the rights and obligations owed to the child and by whom they are owed can be directly affected by virtually anyone.⁷⁴ None of these provisions demand anything more from a mother who brings an action than from the father or the child, or necessitates that an establishment of paternity accompany the contestation. The Netherlands, however, limits the right more than the aforementioned jurisdictions. The Dutch enable a mother to contest paternity only if she establishes it elsewhere in the same act.⁷⁵

While bearing a strong resemblance to the Dutch legislation, Louisiana’s legislation was primarily modeled after articles 318 and 318.1 of the French Civil Code.⁷⁶ Translated, article 318 of the French Civil Code states that “[e]ven in the absence of disavowal, the mother can contest the paternity of the husband, but only for the purpose of legitimating the child, where, after the dissolution of the marriage, she has married the true father of the child.”⁷⁷ The French thus prohibit a mother from only contesting the paternity of her husband, which would in fact bastardize her child; to do so, she must also legitimate the child by marrying his true father.

B. Comparative Sources of a Similar Right: The Uniform Parentage Act

Within the United States, Louisiana lags behind other states in providing a mother with a right to contest paternity. Comment (a) to new article 191 references Section 6(a) of the 1973 Uniform

73. CIV. CODE art. 1839(1) (Port.) (J.-R. Trahan, trans.), available at http://www.giea.net/legislacao.net/codigos/codigo_civil/direito_familia/estabelecimento_filiacao.htm#ARTIGO1839.

74. CIV. CODE art. 531, ¶ 1 (Quebec), available at <http://www.canlii.org/qc/laws/sta/c-1991/20050616/whole.html>.

75. Burgerlijk Wetboek [BW] [Civil Code] art. 198(1) (Neth.) (Louis F. Ganshof & Charles Petit, trans. (French)) (J.-R. Trahan, trans. (English)).

76. LA. CIV. CODE ANN. art. 191 cmt. (a) (2006) (referencing CODE CIVIL [C. CIV.] arts. 318, 318.1 (Fr.)).

77. C. CIV. art. 318 (Fr.) (J.-R. Trahan, trans.).

Parentage Act ("UPA"), adopted by at least nineteen states,⁷⁸ as a statutory scheme allowing the mother to disprove the paternity of her husband.⁷⁹ In comparing article 191 to the 1973 UPA provision, the greater restrictiveness of Louisiana's legislation is clear.

Under Section 6(a)(2) of the UPA, a child's natural mother, in addition to the child or a man presumed to be his father, could bring an action to declare the non-existence of the father-child relationship presumed by the law. Section 9 stated that, in addition to the natural mother, the child, each presumed father, and each man alleged to be the natural father "shall be made parties" to the action or given notice of it "if not subject to the jurisdiction of the court."⁸⁰ Temporal limitations required the party to bring the action "within a reasonable time after obtaining knowledge of relevant facts," but, peremptively, before the child turned five.⁸¹ Upon rebutting the presumption of paternity, a mother *could*, but need not, establish paternity of another man if the other man were made a party to the action.⁸² Judgment of the court was "determinative for all purposes," and could include provisions directed against appropriate parties regarding the duty of support, as well as custody and guardianship of the child.⁸³

The 1973 UPA underwent revision in 2000 and was amended in 2002. The current Act maintains the marital presumption of paternity, but omits the prior requirement that the presumption be

78. According to the National Conference of Commissioners on Uniform State Laws, as of December 2000, nineteen states adopted the 1973 UPA and others enacted portions of it. UNIF. PARENTAGE ACT, 9(B) U.L.A. 296 (Supp. 2006), available at <http://www.law.upenn.edu/bll/ulc/upa/final2002.htm> (located in the "Prefatory Note" below the table of contents and above the text of the UPA).

79. LA. CIV. CODE ANN. art. 191 cmt. (a) (2006) (referencing UNIF. PARENTAGE ACT § 6(a), 9(B) U.L.A. 410 (1973)). The comment to article 191 references the 1973 version of the UPA and not the UPA as revised in 2000 and amended in 2002, wherein the noted section no longer exists.

80. UNIF. PARENTAGE ACT § 9, 9(B) U.L.A. 435 (1973).

81. *Id.* § 6(a)(2).

82. *Id.*

83. *Id.* § 15.

rebutted by clear and convincing evidence.⁸⁴ Interestingly, it now imposes greater restrictions on a *presumed father's* ability to deny paternity, stipulating that the validity of a denial is in part dependent on "an acknowledgment of paternity signed, or otherwise authenticated, by another man."⁸⁵ The provision concerning denial of paternity makes no reference to the mother. Nonetheless, the mother's right to contest paternity remains.⁸⁶ The time period within which she must act has, however, been shortened. Section 607 of the UPA requires a mother seeking to adjudicate the parentage of a child with a presumed father to commence the action no later than two years after the child's birth.⁸⁷ The UPA extends this time period in a situation where the presumed father and mother did not cohabit or engage in sexual relations during the probable time of conception and the presumed father never openly held out the child as his own.⁸⁸ If a court so determines, a paternity challenge can be maintained at any time.⁸⁹

To date, seven states have adopted the revised UPA.⁹⁰ Of them, only Texas and Wyoming appear more liberal in further extending the time limit during which a disavowal action must be brought by a presumed father. Texas extends the time limit to "the

84. UNIF. PARENTAGE ACT § 204(a) (amended 2002), 9(B) U.L.A. 311 (Supp. 2006) (stating, in pertinent part, "[a] man is presumed to be the father of a child if . . . he and the mother of the child are married to each other and the child is born during the marriage . . ."). Regarding the omission of the requirement that the presumption be rebutted by clear and convincing evidence, the comment to Section 204, updated in December 2002, states that "the existence of modern genetic testing obviates this old approach to the problem of conflicting presumptions when a court is to determine paternity." *Id.* § 204.

85. *Id.* § 303(1).

86. *Id.* §§ 303, 607 (comment to Section 607 states that the Section "establishes the right of a mother . . . to challenge the presumption of his paternity established by § 204").

87. *Id.* § 607(a). This time period applies to any party, presumed father included, bringing an action to adjudicate parentage of a child.

88. *Id.* § 607(b).

89. *Id.*

90. Delaware, North Dakota, Oklahoma, Texas, Utah, Washington, and Wyoming. Legislation adopting the UPA is pending in Illinois and Maine. Uniform Law Commissioners: A Few Facts About the Uniform Parentage Act, http://www.nccusl.org/Update/uniformact_factsheets/uniformacts-fs-upa.asp (last visited on Aug. 26, 2006).

fourth anniversary of the date of the birth of the child.”⁹¹ Wyoming mandates that an action to adjudicate parentage of a child be brought “in no event later than five (5) years after the child’s birth.”⁹²

The reference to the 1973 UPA in the comments to Louisiana’s new legislation⁹³ is puzzling as the temporal requirement of the revised UPA bears a closer resemblance to Louisiana’s article 191.⁹⁴ Both the 2002 UPA and article 191 require that an action challenging paternity be brought within two years of the child’s birth. But, where the UPA relaxes this time period,⁹⁵ Louisiana’s legislation provides no such extension for a mother bringing an action under article 191.⁹⁶

Louisiana’s legislation departs from the UPA in other significant ways, revealing its greater restrictiveness. A mother in Louisiana must establish paternity at the same time that she contests it.⁹⁷ She can accomplish each only by meeting a clear and convincing evidentiary standard,⁹⁸ a requirement removed in the revision of the UPA. And, unlike the UPA, she must be remarried to the child’s true biological father, who himself must have acknowledged the child.⁹⁹

The liberality of a mother’s right under the UPA, most evident in a mother’s ability to contest paternity without simultaneously establishing it, may be perceived as an advantage to a mother, but raises questions as to what it accomplishes for the child. In contrast to a presumed father’s denial of paternity, Section 607, which authorizes a mother’s right to adjudicate the parentage of a child, leaves to the mother’s discretion whether the child is ultimately filiated to a father. This constitutes an additional point of distinction between the UPA and new article 191. Placing the

91. TEX. FAM. CODE ANN. § 160.607(a) (Vernon Supp. 2006).

92. WYO. STAT. ANN. § 14-2-807(a) (2005).

93. LA. CIV. CODE ANN. art. 191 cmt. (a) (2006).

94. UNIF. PARENTAGE ACT § 607, 9(B) U.L.A. 341 (Supp. 2006).

95. See sources cited *supra* notes 85-88 and accompanying text.

96. The two-year period is peremptive. LA. CIV. CODE ANN. art. 193 (2006). See also *supra* note 57.

97. LA. CIV. CODE ANN. art. 191 (2006).

98. LA. CIV. CODE ANN. art. 192 (2006).

99. LA. CIV. CODE ANN. art. 191 (2006).

child within an intact, married family represents an overriding concern of article 191. Aside from the requirement that a presumed father's denial of paternity involve acknowledgment of paternity by another man, leaving the child filiated to two parents who are not *necessarily married*, the UPA's provisions and comments leave any similar consideration unmentioned.¹⁰⁰ The UPA certainly does not attach a similar concern with a *mother's* action.

IV. ARTICLE BY ARTICLE COMMENTARY OF A MOTHER'S NEW RIGHT

The new legislation contemplates a situation in which the mother's marriage to her former husband has dissolved due to death or divorce and she seeks to biologically align her child to his true father, her present husband. Thus, a presumption of paternity applicable to her former husband, stemming from articles 185 and 186, constitutes a necessary element of an action under new article 191.¹⁰¹

A. Article 191

Article 191. Contestation and establishment of paternity by mother

The mother of a child may institute an action to establish both that her former husband is not the father of the child and that her present husband is the father. This action may be instituted only if the present husband has acknowledged the child by authentic act or by signing the birth certificate.¹⁰²

100. The Prefatory Note to the 1973 UPA indicates that declaring "substantive legal equality for all children regardless of the marital status of their parents" was a driving intention of its drafting. UNIF. PARENTAGE ACT, 9(B) U.L.A. 379 (1973). The Prefatory Note to the 2002 Act reiterates this concern. UNIF. PARENTAGE ACT, 9(B) U.L.A. 296 (Supp. 2006), *available at* <http://www.law.upenn.edu/bll/ulc/upa/final2002.htm>.

101. LA. CIV. CODE ANN. arts. 185, 186 (2006).

102. LA. CIV. CODE ANN. art. 191 (2006).

Unlike many articles in the Louisiana Civil Code, the title of article 191 appears at first glance to be indicative of its content. The article provides a mother with an action to contest her former husband's paternity but it requires that she also assert the paternity of her present husband. Prerequisites to her action thus include a divorce or death terminating her marriage to the presumed father,¹⁰³ her marriage to the child's biological father,¹⁰⁴ the biological father's acknowledgment of the child,¹⁰⁵ and the child not having attained the age of two.¹⁰⁶

Though permissive in stating that a mother "may" bring an action, the language of article 191 is demanding in what it requires of her should she act. Joinder of the two actions—one to contest her husband's paternity, the other to establish paternity of the biological father—is obligatory. In other words, an action to contest paternity must be joined with an action to establish it.¹⁰⁷ The utility or application of the article is thus extremely limited; aside from the child, it necessitates the involvement of three parties: the mother, her present husband, and her former husband.

The mother who wishes to contest the paternity of her former husband can only do so if she has remarried and her current husband attests, through an authentic act¹⁰⁸ or by signing the birth certificate, that he is the father of the child. As the language of the article indicates, the right is personal and belongs to the mother but it depends on action by her present husband.¹⁰⁹ This requirement

103. *Id.*

104. LA. CIV. CODE ANN. arts. 192, 193 (2006).

105. LA. CIV. CODE ANN. art. 191 (2006).

106. LA. CIV. CODE ANN. art. 193 (2006).

107. LA. CIV. CODE ANN. art. 191 cmt. (c) (2006).

108. Louisiana Civil Code article 1833 sets forth the requirements of an authentic act. In pertinent part, it is "a writing executed before a notary public or other officer authorized to perform that function, in the presence of two witnesses, and signed by each party who executed it, by each witness, and by each notary public before whom it was executed." LA. CIV. CODE ANN. art. 1833 (2006).

109. The article and its comments convey that the action is a non-heritable one, belonging only to the mother. This makes sense given the legislation's intent to biologically align the child within a married family. For example, if the mother were to pass away before commencing an action within the necessary

illustrates one reason why Kassie Cravens, the mother in the Alabama case, would fail in a Louisiana court: not only was Jon Michael's biological father not a party to the action, but Mrs. Cravens was not remarried to him, nor had he acknowledged the child.

Implementing legislation for the new articles¹¹⁰ states that the "mother of the child is the proper party plaintiff" in a contestation action and that "her former husband and present husband are proper party defendants."¹¹¹ Additionally, the act directs that the hearing may be closed to the public.¹¹² A judgment for the mother terminates existing child custody and visitation orders, as well as child support obligations.¹¹³ In the case of the Cravens, Mr. Cravens would lose custody and perhaps visitation rights¹¹⁴

time period, for another to bring it on her behalf would defeat the goal of aligning the child biologically. LA. CIV. CODE ANN. art. 191 cmt. (b) (2006).

110. 2006 La. Acts No. 344, § 4.

111. *Id.* The act states, in pertinent part:

§ 403. Mother's contestation action; procedure

A. The mother of the child is the proper party plaintiff and her former husband and present husband are proper parties defendant in the contestation action provided for in the Civil Code.

B. The hearing may be closed to the public.

C. (1) A judgment rendered in favor of the mother terminates existing child custody and visitation orders. However, the former husband in extraordinary circumstances may be granted reasonable visitation if the court finds it is in the best interests of the child in accordance with the Civil Code.

(2) A judgment rendered in favor of the mother terminates the obligation of the former husband to pay child support and revokes any court order enforcing that obligation.

(3) A judgment does not affect any child support payment or arrearages paid, due, or owing prior to the date the contestation action was filed.

D. An appeal from a judgment in the contestation action may only be taken within thirty days from the applicable date in accordance with Code of Civil Procedure Article 2087(A). The appeal shall suspend the execution of the judgment.

Id.

112. *Id.*

113. *Id.*

114. Under Louisiana Civil Code article 136(A), a judgment in favor of Mrs. Cravens would render Mr. Cravens no longer entitled to reasonable visitation

concerning Jon Michael, but his obligation to support the child would also cease. Appeal of a judgment in favor of the mother must be quickly pursued; the act states that it must be taken within thirty days.¹¹⁵

As noted, the article requires that a mother's present husband acknowledge the child. In a situation where he does so by authentic act, potential confusion may loom where a present husband has acknowledged the child, but subsequently revokes it within sixty days of executing it, despite a judgment already rendered by the court. The drafted implementing legislation allows for such a case. Louisiana Revised Statutes Section 9:406 states, in pertinent part, that a "person who executed an authentic act of acknowledgment may, without cause, revoke it before . . . [s]ixty days of the signing of the authentic act of acknowledgment."¹¹⁶ *Res judicata*, however, likely alleviates cause for concern. If the mother obtained a final judgment, any revocation of the authentic act by the current husband may be a moot issue; her present husband will have been adjudicated the father. In requiring the mother's current husband to acknowledge the child by authentic act, official comments to article 191 should convey that any subsequent revocation of the acknowledgment, occurring after a final judgment under article 194, will not defeat the establishment of the current husband's paternity.

As noted in comment (e) to article 191, the consequence of a successful article 191 action is that the marital presumption is rebutted and paternity to the present husband is established.¹¹⁷ But as subsequent articles convey, article 191 merely sets forth the requirements of a mother's cause of action to contest and establish

rights. See LA. CIV. CODE ANN. art. 136 (2006). However, under article 136(B), if the circumstances are deemed extraordinary, the court might grant Mr. Cravens "reasonable visitation rights" if it determines such is in the "best interest of the child" according to the listed considerations. *Id.*

115. 2006 La. Acts No. 344, § 4.

116. *Id.*

117. LA. CIV. CODE ANN. art. 191 cmt. (e) (2006) (noting that the presumptions of prior articles 185 and 186 are rebutted by a judgment in an action under current article 191).

paternity of a child. To be successful in doing so, she must meet a high burden of proof.

B. Article 192

Article 192. Contestation action; proof

The mother shall prove by clear and convincing evidence both that her former husband is not the father and that her present husband is the father. The testimony of the mother shall be corroborated by other evidence.¹¹⁸

Article 192 states that a mother “*shall prove by clear and convincing evidence*” two elements: (1) that her former husband is not the father of the child; and (2) that her present husband is the child’s father.¹¹⁹ The article also stipulates that the mother’s testimony requires corroboration by other evidence.

Again, the efforts required of the mother are two-fold: the language of the article conveys the insufficiency of her solely establishing her present husband as the child’s father. Instead, use of the word “both” indicates she must affirmatively disprove the paternity of her former husband and affirmatively prove the paternity of her current husband.

The burden of proof required—clear and convincing evidence—and the corroboration of testimonial evidence are similarly required of a husband who endeavors under article 187 to disavow paternity of a child.¹²⁰ The Louisiana Supreme Court has interpreted this standard, an intermediate one between preponderance of the evidence and proof beyond a reasonable doubt, to require a party to persuade the trier of fact that “the fact or causation sought to be proved is highly probable, i.e. much more probable than its non-existence.”¹²¹ The standard is often employed where policy concerns lead the court to disfavor a particular type of claim, including an issue of filiation involving the sanctity of the family.¹²²

118. LA. CIV. CODE ANN. art. 192 (2006).

119. *Id.* (emphasis added).

120. LA. CIV. CODE ANN. art. 187 (2006).

121. *Chatelain v. State*, 586 So. 2d 1373, 1378 (La. 1991).

122. *Succession of Lyons*, 452 So. 2d 1161, 1165 (La. 1984).

The treatment of the evidentiary standard deserves consideration. As in the revision to article 187,¹²³ neither article 192 nor its official comments give insight into what evidence meets this burden of proof. Article 187's predecessor listed types of evidence that might constitute a "preponderance of the evidence," including scientific or medical evidence such as blood tests.¹²⁴ In *Mock v. Mock*, the Louisiana Supreme Court determined that the legislature intended that standard to be restrictive as to the types of evidence sufficient to constitute a preponderance.¹²⁵ Focusing on the language in the article at the time, requiring the husband to prove *facts* indicative of non-paternity, the court concluded that the rebuttal of the presumption of paternity could be achieved only by proof of *facts* susceptible of independent verification or corroboration.¹²⁶

Yet similar statutory guidance was not included for the clear and convincing standard. As noted, jurisprudence interprets the standard to require that the existence of a fact be highly likely or much more probable than not.¹²⁷ But no language in the legislation or its official comments illuminates the type of facts or data intended to meet this burden. Moreover, the new article omits the pre-existing requirement that facts or data be susceptible of independent verification. The legislature, in effect, leaves to the discretion of the courts the determination of what evidence suffices as "clear and convincing," so long as it does not accept uncorroborated testimonial evidence alone.

123. In the 2005 revision to article 187, the burden of proof was heightened to clear and convincing evidence, but the requirement that proof of facts be susceptible of independent verification by physical evidence was omitted. LA. CIV. CODE ANN. art. 187 cmt. (a) (2006).

124. Prior to the 2005 revision, article 187 allowed a husband to disavow paternity of a child if he proved by a preponderance of the evidence facts reasonably indicating that he is not the father. LA. CIV. CODE ANN. art. 187 (2004), *amended by* 2005 La. Acts No. 192, § 1. The article mandated that such facts be susceptible of independent verification or corroboration by physical data and listed negative blood tests, unmatched DNA prints, sterility, physical impossibility, and other scientific or medical evidence as the type of evidence sufficient to meet the evidentiary standard. *Id.*

125. 411 So. 2d 1063, 1064 (La. 1982).

126. *Id.* at 1066.

127. *Chatelain v. State*, 586 So. 2d 1373, 1378 (La. 1991).

Louisiana Revised Statutes Section 9:396 authorizes the court to order the mother, child, and alleged father to submit to the collection of blood or tissue samples *as necessary* in an action in which paternity is a relevant fact, or in an action *en desaveu* (disavowal).¹²⁸ A proposed revision to the statute, reflected in the drafted implementing legislation, adds language allowing the court to order the mother's "husband or former husband" to submit to testing.¹²⁹ But a court is not required to issue the order—and the comments to the new legislation make no reference to the statute.

Therefore, although the new legislation imposes the higher standard of clear and convincing evidence, the text of the legislation, because it does not preclude it, allows for a judicial application of the standard that serves the underlying interest of aligning the child within an intact, married family. By leaving unarticulated what evidence constitutes clear and convincing, or whether evidence of the same nature is required for each of the mother's two obligatory actions, paternity may be disproved by one type of evidence¹³⁰ while established by another.¹³¹ In other words, a mother can tender blood-work contesting the paternity of her former husband¹³² while using evidence of an alternative

128. Louisiana Revised Statutes Section 9:396 states, in pertinent part:

[I]n any civil action in which paternity is a relevant fact, or in an action *en desaveu*, the court may, on its own initiative, or shall, under either of the following circumstances, order the mother, child, and alleged father to submit to the collection of blood or tissue samples, or both, and direct that inherited characteristics in the samples, including but not limited to blood and tissue type, be determined by appropriate testing procedure

LA. REV. STAT. ANN. § 9:396 (2000 & Supp. 2006). The court may make the order "[u]pon motion of any party to the action made at a time so as not to delay the proceedings unduly." *Id.* § 9:396(A)(1)(b). If the court finds that experts agree that tests show "the alleged father is not the father of the child, [then] the question of paternity shall be resolved accordingly. If the experts disagree in their findings or conclusions, the question shall be submitted upon all of the evidence." *Id.* § 9:397.3(D).

129. 2006 La. Acts No. 344, § 4.

130. Such as scientific or medical data.

131. Such as testimony of the current husband, his acknowledgment of the child, testimony of the mother, and their marriage license.

132. In *State v. Johnson*, 753 So. 2d 388, 391–92 (La. App. 1st Cir. 2000), the court stated that paternity is a factual question. Scientific testing, it said,

sort—her testimony, corroborated by her present husband's, plus their marriage license—to establish paternity of the current husband. As long as both requirements are, according to the court, proven by clear and convincing evidence, the language of the article allows leeway for a trier of fact to find that the mother has met her burden, perhaps with the goal of honoring the underlying intent of the legislation.¹³³

Article 192 does not dismiss the relevance of a mother's testimony in meeting a clear and convincing evidentiary standard, yet it requires that such testimony, plus that of her former and present husbands, be corroborated by other evidence. Again, the legislature leaves to court discretion, on a factual basis, the determination of what constitutes corroborating evidence. Comment (b) to article 187 provides that "other evidence" includes "scientific or medical evidence, including the results of blood tests or DNA prints, or medical evidence of sterility; evidence of physical impossibility due to location at the probable time of conception; or tangible evidence and testimony of lay witnesses."¹³⁴ Inferring that the legislature intended the same for article 192, the variety of what constitutes corroborating evidence—in particular the testimony of lay witnesses—leaves open the possibility that the supposedly high clear and convincing evidentiary standard can be circumvented by court discretion, all in an effort to serve the child and the legislative intent. Therefore, it is again plausible that the court's determination may hinge largely on what suits the best interests of the child and is consistent with the purpose of the legislation.

while not alone sufficient to prove paternity, is "persuasive and objective evidence that can help establish paternity by a preponderance of the evidence." One then wonders if, when coupled with testimony by the mother and her current husband, such scientific testing meets a clear and convincing standard disproving the former husband's paternity. The court can also call for genetic testing *sua sponte*.

133. That goal is to align the child with its biological father and place it within an intact family. LA. CIV. CODE ANN. art. 191 cmt. (b) (2006).

134. LA. CIV. CODE ANN. art. 187 (2006).

C. Article 193

Article 193. Contestation and establishment of paternity; time period

The action by the mother shall be instituted within a peremptive period of one hundred eighty days from the marriage to her present husband and also within two years from the day of the birth of the child, except as may otherwise be provided by law.¹³⁵

Building upon the burden of proof required under article 192, article 193 sets forth the temporal requirements of an article 191 action. Unlike the liberative prescription applicable to a husband's action,¹³⁶ a peremptive period governs the mother's action, leaving no possibility of suspension or interruption. It forces the mother to act quickly, limiting the time-frame during which she may institute an action to one hundred eighty days from the marriage to her present husband. Additionally, the dual peremptive requirement mandates that, should the mother choose to act, she must also do so within two years from the day of the birth of the child.

The comment to the article conveys that, in addition to the aforementioned requirements of the mother, the peremptive period restriction serves as another means by which the best interests of the child are served.¹³⁷ The intent is to align the child with its biological father early in life, before the child becomes attached to someone else. Thus, the article departs from its French ancestor, which requires that an action be instituted before a child reaches the age of seven years.¹³⁸ The requirement is yet another reason why Mrs. Cravens would fail in a Louisiana court; not only has she not remarried, but the fact that Jon Michael is three years old would preclude her from bringing an action.

135. LA. CIV. CODE ANN. art. 193 (2006).

136. LA. CIV. CODE ANN. art. 189 (2006).

137. LA. CIV. CODE ANN. art. 189 cmt. (2006).

138. *Id.*

D. Article 194

Article 194. Judgment in contestation action

A judgment shall not be rendered decreeing that the former husband is not the father of the child unless the judgment also decrees that the present husband is the father of the child.¹³⁹

Stated in the negative, article 194 reiterates that a mother instituting an action to contest and establish the paternity of her child will be successful only if she is able to simultaneously prove that her former husband is not the child's father, while establishing that her present husband is the child's father. The comment to the article makes clear that the restriction on when a judgment will be rendered stems directly from the underlying purpose of the mother's new right—"to align biological and legal paternity more closely and to establish the child as a member of an intact family resulting from the marriage of the mother and alleged father."¹⁴⁰ A judgment will thus be decreed only when this purpose is fulfilled.

Though article 194 does not explicitly state as much, the comment to article 192 notes that, as the result of a successful article 191 action, legal paternity of the child transfers from the mother's former husband to her present husband, removing any filiation between the child and the former husband, as well as all the consequences of filiation.¹⁴¹

V. ASSESSING THE NEW LAW: IS IT GOOD FOR THE CHILD?

Historically and today, Louisiana's law of filiation affords to a presumed father a greater right than the mother to rebut the marital presumption. Of a related note is that, as of 2005, the Louisiana Civil Code provides a definition of maternity.¹⁴² Such a definition had never before been included since determining the mother of a

139. LA. CIV. CODE ANN. art. 194 (2006).

140. LA. CIV. CODE ANN. art. 194 cmt. (2006).

141. LA. CIV. CODE ANN. art. 192 cmt. (2006). *See* sources cited *supra* notes 6–14 and accompanying text.

142. LA. CIV. CODE ANN. art. 184 (2006) ("Maternity may be established by a preponderance of the evidence that the child was born of a particular woman, except as otherwise provided by law.").

child—she who gave birth—proved easy until advances in assisted reproduction technology complicated the issue. Paternity, which is not ascertainable from actual birth, is understandably more difficult to establish. Therefore, the filiation articles, while creating a presumption of paternity, enable a presumed father to disprove it. Under article 187, a man can disavow a child as long as he offers clear and convincing evidence within the prescriptive period.¹⁴³ In effect, his action potentially leaves the child unfiliated and without the stability and protections of a married, intact family unit. A mother, under article 191, cannot so expose the child, as she is required to establish paternity at the same time as she contests it, while married to the child's biological father.¹⁴⁴ The distinction between the respective requirements prompts a question of equality of rights, but does not reflect the primary concern of the filiation legislation. The articles instead focus upon the child. Indeed, the requirements demanded for a husband's disavowal action aim as well to restrict the ease with which a child may be left unfiliated to a father, demonstrating that protecting the child remains a primary focus of the entire legislative subject matter.

Inequality of the rights of a mother and presumed father pertaining to paternity is a salient issue. According to Planiol, the right to disavow a child was exclusively vested in the husband because "the father alone may pass upon his paternity. He alone is able to decide whether the presumption the law raises against him is or is not well founded."¹⁴⁵ The Code Napoleon, therefore, refused to others, including the mother, the right to contest a child's legitimacy while the husband was alive. Exception was made for a husband's heirs when he died without having lost his right to bring a disavowal action.¹⁴⁶ Until recently, the Louisiana Civil Code did the same. But in assessing the significance of the

143. LA. CIV. CODE ANN. art. 187 (2006).

144. LA. CIV. CODE ANN. art. 191 (2006).

145. Marcel Planiol, *Exclusive Right of Action Vested in the Husband* § 2:1422, in 1 TRAITÉ ÉLÉMENTAIRE DE DROIT CIVIL 780, 781 (La. State Law Inst. trans., 1959) (12th ed. 1939).

146. *Id.* at § 2:1422, at 782. Planiol distinguishes the husband's right that passes to his heirs: "It is open to the heirs only to safeguard their pecuniary interests In reality, the heirs do not enter a veritable disavowal." *Id.*

mother's new right, attention should not center on the disparity between the rights of the husband and those of the mother because to do so would undermine the significance of article 191. Instead, focus should be on what the mother's right, and particularly its requirements, accomplishes for the child, namely providing another means of giving the child the stability of an intact, stable family unit. The right is a positive one in this regard, enabling a mother to exercise some influence over who owes legal obligations and may exercise rights to her child. But her influence cannot be arbitrary; she must meet the requirements set forth in articles 191 through 194. In a successful action, the child remains protected—more so than in the case of a disavowal action—as a mother cannot leave a legitimate child unfiliated to a father.¹⁴⁷

Concerned with the effect social stigmas and legal penalties stemming from illegitimacy have historically had on a child, the presumption of paternity in the filiation articles remains rightly focused on the child. The equal protection clause of both the state and federal constitutions protect a child from suffering legal discrimination. Therefore, today's concerns about the welfare of children are primarily, but not exclusively, social. In looking at the effect family structure has on a child, social science research confirms the primacy of this concern. Benefits of the marital presumption are apparent in research evidencing that certain family structures, like married, biological parents, benefit a child more than others¹⁴⁸ by decreasing any number of risks, including poverty,¹⁴⁹ lower educational attainment,¹⁵⁰ juvenile delinquency and conduct disorder,¹⁵¹ and early unwed parenthood.¹⁵²

147. In other cases she can by not bringing a paternity action.

148. Brief for James Q. Wilson et al. as Amicus Curiae Supporting Appellants, *Clinton v. California*, No. A110463, at 28 n.4 (San Francisco Superior Court) (citing Kristin Anderson Moore et al., *Marriage from a Child's Perspective: How does Family Structure Affect Children and What Can We Do About It?*, CHILD TRENDS RESEARCH BRIEF, June 2002, at 1, available at <http://www.childtrends.org/files/MarriageRB602.pdf> (noting "[t]his research brief on family structure does not compare outcomes for children raised by same-sex couples to children in other types of families"))).

149. *Id.* at 28 n.19 (citing I. Sawhill, *Families at Risk*, in SETTING NATIONAL PRIORITIES 97–135 (H.H. Aaron & R.D. Reischauer, eds., Brookings Inst. Press 1999); Sarah McLanahan, *Family, State, and Child Well-Being*, 26 ANN. REV. OF SOC. 703 (2000); Mark R. Rank & Thomas A. Hirschl, *The Economic Risk of*

Childhood in America: Estimating the Probability of Poverty Across the Formative Years, 61 J. MARRIAGE & FAM. 1058 (1999)).

150. *Id.* at 29 n.24 (citing Paul R. Amato, *Children of Divorce in the 1990s: An Update of the Amato and Keith (1991) Meta-Analysis*, 15 J. FAM. PSYCHOL. 355 (2001); Timothy J. Biblarz & Gregg Gottainer, *Family Structure and Children's Success: A Comparison of Widowed and Divorced Single-Mother Families*, 62 J. MARRIAGE & FAM. 533 (2000); Zeng-Yin Cheng & Howard B. Kaplan, *Explaining the Impact of Family Structure During Adolescence on Adult Educational Attainment*, 7 APPLIED BEHAV. & SCI. REV. 23 (1999); William H. Jeynes, *The Effects of Several of the Most Common Family Structures on the Academic Achievement of Eighth Graders*, 30 MARRIAGE & FAM. REV. 73 (2000); Dean Lillard & Jennifer Gerner, *Getting to the Ivy League*, 70 J. HIGHER EDUC. 206 (1996); Sara McLanahan & Gary Sandefur, *GROWING UP WITH A SINGLE PARENT: WHAT HELPS, WHAT HURTS* (Harvard Univ. Press 1994)). The Center for Marriage and Families, part of the Institute for American Values, states that:

As early as age three, children's ability to adapt to classroom routines appears to be influenced by their parents' marital status Fourth grade students with married parents score higher on reading comprehension, compared to students living in stepfamilies, with single mothers, and in other types of families The effects of family structure on academic success continue through high school. Children growing up with non-intact families engage in more adolescent misbehavior, which harms grades and test scores. Family structure substantially influences outcomes such as high school dropout rates, high school graduation rates, and age at first pregnancy Students from non-intact families miss school, are tardy, and cut class about 30 percent more often than do students from intact homes. These differences exist in part because parents in non-intact family homes appear less able to supervise and monitor their children For children, growing up without their own married parents is linked with higher rates of stress, depression, anxiety, and low self-esteem during the teenage years—problems that can significantly reduce their ability to focus and achieve in school.

Institute for American Values, Center for Marriage and Families, Research Brief No. 1, 2–4, Nov. 2005, available at <http://www.americanvalues.org/pdfs/researchbrief1.pdf>.

151. Brief for Wilson, *supra* note 148, at 29 n.25 (citing Chris Coughlin & Samuel Vuchinich, *Family Experience in Preadolescence and the Development of Male Delinquency*, 58 J. MARRIAGE & FAM. 491 (1996); Ross L. Matsueda & Karen Heimer, *Race, Family Structure and Delinquency: A Test of Differential Association and Social Control Theories*, 52 AM. SOC. REV. 171 (1987); George Thomas & Michael P. Farrell, *The Effects of Single-Mother Families and*

Paul Amato, a sociology professor at Pennsylvania State University, finds that research “clearly demonstrates that children growing up with two continuously married parents are less likely than other children to experience a wide range of cognitive, emotional, and social problems.”¹⁵³ But by “married parents,” Amato means two *biological* married parents of a child.¹⁵⁴ The distinction, according to Amato, has influence on the children, as data indicates that children reared in stepfamilies fare little better than those raised in single-parent households in terms of esteem, conduct, academic success, and peer relations. He concludes that “the marriage of a single parent [to someone other than the child’s biological parent] does not appear to improve the functioning of most children.”¹⁵⁵ His conclusion stems from stepfamily research, where studies consistently reveal that “children in stepfamilies exhibit more problems than do children with continuously married parents and about the same number of problems as do children with single parents.”¹⁵⁶ Amato attributes at least part of these problems to the stress of stepfamily formation with divorce, which often introduces instability into a child’s life through “moving,

Nonresident Fathers on Delinquency and Substance Abuse, 58 J. MARRIAGE & FAM. 884 (1996)).

152. *Id.* at 29 n.27 (citing E. Mavis Hetherington & John Kelly, FOR BETTER OR FOR WORSE: DIVORCE RECONSIDERED (2002); Andrew J. Cherlin et al., *Parental Divorce in Childhood and Demographic Outcomes in Young Adulthood*, 32 DEMOGRAPHY 299 (1995); Catherine E. Ross & John Mirowsky, *Parental Divorce, Life-Course Disruption, and Adult Depression*, 61 J. MARRIAGE & FAM. 1034 (1999)). Researchers Martin Daly and Margo Wilson state that, “controlling for the family’s economic means, U.S. stepchildren receive reduced investment in the form of support for higher education, routine medical and dental care, and even food.” Martin Daly & Margo Wilson, THE “CINDERELLA EFFECT”: ELEVATED MISTREATMENT OF STEPCHILDREN IN COMPARISON TO THOSE LIVING WITH GENETIC PARENTS 7, <http://www.psych.ucsb.edu/research/cep/buller/cinderella%20effect%20facts.pdf> (last visited Aug. 27, 2006).

153. Paul R. Amato, *The Impact of Family Formation Change on the Well-Being of the Next Generation*, 15 FUTURE OF CHILD. 75, 89 (2005).

154. *Id.* at 80.

155. *Id.*

156. *Id.*

adapting to new people in the household, and learning new rules and routines.”¹⁵⁷

Consider, for instance, a mother, such as Mrs. Cravens in the Alabama case, who does not bring an article 191 action but divorces her husband, the non-biological father of her child. If Mrs. Cravens loses the right to bring the action because she no longer meets its prerequisites, Jon Michael remains filiated to her former husband. Various situations may then result. In one, Mrs. Cravens remains a single mother, with social science indicating that Jon Michael is likely to experience economic disadvantages, the effects of which influence his academic success, home and neighborhood environment, behavioral problems, and the quality of parenting received.¹⁵⁸

In another scenario, Mrs. Cravens remarries, though not to Jon Michael’s biological father. Unless the stepfather adopts Jon Michael through an infra-family adoption, a process in Louisiana that, with a few exceptions, requires the consent of Mr. Cravens,¹⁵⁹ the stepfather remains biologically and legally unrelated to Jon Michael; if Mrs. Cravens then dies, the “stepfather [may lose] any legal claim to custody” as a parent, as the “legal nonrelationship . . . stems directly from the biological nonrelationship.”¹⁶⁰ The marriage creates a stepfamily and the potential for the aforementioned implications. Moreover, it creates the possibility for a “redivorce.”¹⁶¹ The risks facing Jon Michael by virtue of his

157. *Id.*

158. *Id.* at 82–83.

159. LA. CHILD. CODE ANN. arts. 1193(2), 1246(4) (2004). However, under Louisiana Revised Statutes Section 9:461, once Jon Michael turns seventeen, he could be adopted by a stepfather without the consent of his biological father. See LA. REV. STAT. ANN. § 9:461 (2004).

160. David Blankenhorn, *FATHERLESS AMERICA: CONFRONTING OUR MOST URGENT SOCIAL PROBLEM* 186 (1995).

161. Katherine Shaw Spaht, *The Remnant of Forced Heirship: The Interrelationship of Undue Influence, What’s Become of Disinheritance, and the Unfinished Business of the Stepparent Usufruct*, 60 LA. L. REV. 637, 663 n.140 (2000) (quoting Maggie Gallagher, *THE ABOLITION OF MARRIAGE: HOW WE DESTROY LASTING LOVE* 71 (1996)) (“Of all the risks to which remarriage exposes children, one of the most common and least remarked is redivorce.”). Spaht also quotes Marilyn Ihinger-Tallman & Kay Pasley, *Stepfamilies in 1984 and Today—A Scholarly Perspective*, in *STEPFAMILIES: HISTORY, RESEARCH,*

mother's remarriage are serious. Social science research reveals a greater probability of abuse, physically and sexually, for stepchildren as compared to a child raised by his two biological parents.¹⁶² In *Fatherless America*, David Blankenhorn quotes William R. Beer's description of a stepfamily as a trolley car, with people getting on and off.¹⁶³ Life becomes increasingly complicated, says Blankenhorn, "because the people involved have divergent family histories and inherently conflicting commitments—many of which surface as real or symbolic conflicts between the substitute father and the biological father."¹⁶⁴ Blankenhorn acknowledges scholars praising stepfathers as society's "last, best hope for a male presence in the lives of many children,"¹⁶⁵ but emphasizes that "social science data regarding outcomes for

AND POLICY 30 (Irene Levin & Marvin B. Sussman eds., 1997), who acknowledge that "our post-modern era 'is characterized by sequential marriage' and 'about 60% of remarried couples now dissolve their unions, and couples are divorcing sooner than they did in the 1980s.'"

162. *Id.* at 665. Spaht states that empirical studies "reflect that child abuse, physical and sexual, occurs more frequently in a stepfamily with a stepfather than in a family consisting of an intact married couple where the husband is the biological father." *Id.* (quoting Patrick F. Fagan, *The Child Abuse Crisis: The Disintegration of Marriage, Family, and the American Community*, BACKGROUND 1115 (1997), available at <http://www.heritage.org/Research/Family/BG1115.cfm>). Additionally, "studies from a diversity of countries indicate that stepparents perpetrate both nonlethal physical assaults and sexual abuse at much higher rates than genetic parents." Daly & Wilson, *supra* note 152, at 4 (citing evidence from child protection agencies and victimization surveys). Daly and Wilson found that "Cinderella effects"—the differential mistreatment of children in steprelationships as opposed to genetic parent-child relationships—"are large regardless of marital registration"; i.e., whether the mother is remarried or lives with her boyfriend. *Id.* at 5.

163. Blankenhorn, *supra* note 160, at 186.

164. *Id.* See also Spaht, *supra* note 161, at 668 n.170 (noting Glenn T. Stanton's observation of Margo Wilson and Martin Daly of McMasters University in Ontario. Wilson and Daly "explain that stepparents parent less effectively, not because they do not know what to do; rather just the opposite. They know what to do, but they don't have the internal motivation because they don't receive the same emotional rewards from their stepchildren as biological parents do." Glenn T. Stanton, WHY MARRIAGE MATTERS: REASONS TO BELIEVE IN MARRIAGE IN POSTMODERN SOCIETY 152 (1997)).

165. Blankenhorn, *supra* note 160, at 187.

children in stepfamilies are remarkably consistent and almost uniformly bleak.”¹⁶⁶

In a third scenario, Mrs. Cravens marries Jon Michael’s true biological father, but, again, has lost the right to bring an article 191 action.¹⁶⁷ If the right no longer exists, Mrs. Cravens’s marrying Jon Michael’s biological father seems also to create a stepfamily situation, or at least allows for some of the effects of one. The benefits provided by an article 191 action are arguably lost. Jon Michael, though now within an intact family unit with *both* biological parents, may have formed a significant relationship with his legal father, Mr. Cravens. Thus, any emotional and psychological effects of the divorce and disruption of his prior family unit are key factors to his adjustment to the formation of a new family.

In light of the social science research, article 191 serves the child well by allowing for biological alignment of the child within a married family.¹⁶⁸ The right encourages a mother, knowing the circumstances of her child’s conception, to act when the child is young. Expediting the action serves the best interests of the child—the child remains within an intact family, the nature of which changes at an early age, thus minimizing any negative repercussions of a disruption to the family unit and enhancing the child’s likelihood of forming a nurturing relationship with, what is in essence, a new father. The article affords greater protections to the child by necessitating that his mother marry his true biological father, thus decreasing potential for the risks evidenced within stepfamilies. A mother cannot use the action to put her child in a

166. *Id.* at 190.

167. For instance, because Jon Michael is now three years old, his age precludes her from doing so. See LA. CIV. CODE ANN. art. 191 (2006). The child may also choose to establish paternity to his true father under article 197, which states that a “child may institute an action to prove paternity even though he is presumed to be the child of another man.” LA. CIV. CODE ANN. art. 197 (2006).

168. Spaht, *supra* note 161, at 666 n.149 (citing Stanton, *supra* note 164, at 152) (“[T]he biological relationship of child and parent is important in intact families simply because the children are *theirs*. Both mother and father have an equal emotional stake in their children’s lives allowing them to extend a tremendous amount of grace to their children.”).

single-parent home,¹⁶⁹ and it precludes her from using it to create a stepfamily. The requirement that the biological father acknowledge the child demands willingness on the father's part to assume parental responsibilities and ensures that the child remains filiated. The totality of requirements thus prevents a mother from bringing an action to the detriment of the child.

Additionally, the article's relevance to the unspoken matter of possible infidelity by the mother similarly renders the action of benefit to the child. A major cause of marital dissolution, infidelity can "reduce a husband's confidences in paternity."¹⁷⁰ In the Alabama case, question of Mr. Cravens's paternity apparently did not present itself until Mrs. Cravens introduced it into the divorce and custody proceedings.¹⁷¹ While not the reason Mr. Cravens sought a divorce, the birth of Jon Michael resulted from Mrs. Cravens's affair. Had the divorce not been filed and the paternity issue subsequently arisen, the issue could arguably then have led to the dissolution of the Cravens' marriage. Already three years old at the time of the divorce proceedings, Jon Michael's age would again preclude Mrs. Cravens from bringing an article 191 action, and with good reason. By requiring a mother to bring the action before her child reaches the age of two, the legislation provides a greater chance of sparing the child exposure to the stigma of adultery and the emotional confusion of a long relationship with another father.

In providing a novel right to a mother and creating another means by which the marital presumption of paternity can be rebutted, article 191 strives to serve the best interests of the child. But it may fall short in one circumstance, should the mother's plan go awry. A practical problem may arise where a mother institutes an article 191 action, proves that her former husband is not the biological father, but fails to establish her current husband as the

169. However, she and the child may be left in a single-parent home if a husband brings a successful disavowal action under article 187. *See* LA. CIV. CODE ANN. art. 187 (2006).

170. David M. Buss, *THE EVOLUTION OF DESIRE: STRATEGIES OF HUMAN MATING* 181 (1994).

171. *Cravens v. Cravens*, No. 2040004, 2005 Ala. Civ. App. LEXIS 523, at *2 (Ala. Civ. App. Sept. 9, 2005), *reh'g overruled*, 2005 Ala. Civ. App. LEXIS 771 (Ala. Civ. App. Dec. 16, 2005).

father of the child. As the mother's effort to rebut the presumption has failed, the presumption remains attached to her former husband despite clear and convincing evidence that he is not the child's biological father. The child thus remains filiated to the former husband. But the risk arises that the former husband, aware of evidence disproving his paternity of the child, may initiate his own disavowal action under article 187.

If the former husband disavows and the child was born *during* the mother's second marriage, the presumption of paternity transfers to the present husband, despite the fact that the mother failed to prove her second husband's actual paternity.¹⁷² On the other hand, if the former husband disavows and the child was born *before* the mother's remarriage, because the child is no longer filiated, the present husband, having already acknowledged the child, is presumed to be the father.¹⁷³ Thus, when the mother has remarried, the child receives the protection of two presumptions; if her former husband disproves that of article 185, the presumption triggered under article 186 by her subsequent remarriage and her new husband's acknowledgment of the child maintains the child's filiation. Only in the rare *absence* of the article 186 presumption¹⁷⁴ or the present husband's disavowal¹⁷⁵ would the child be left unfiliated.¹⁷⁶ In such a situation, the result is undoubtedly an unintended consequence of a mother's thwarted action and not one serving the interests of the child.¹⁷⁷ But remedies exist. Because

172. LA. CIV. CODE ANN. art. 186 (2006).

173. LA. CIV. CODE ANN. arts. 195, 196 (2006).

174. LA. CIV. CODE ANN. art. 195 (2006). The presumption is created by the mother's subsequent marriage and the present husband's acknowledgment of the child. *Id.* The presumption would seem only to not apply were the father to rescind his authentic act after the contestation action, see *supra* note 116 and accompanying text, or if the mother were to withdraw her concurrence, LA. CIV. CODE ANN. art. 195 (2006).

175. LA. CIV. CODE ANN. arts. 187, 195 (2006).

176. A similar outcome, though, may result from a disavowal action brought by a presumed father.

177. Perhaps the situation can be avoided by the following additional procedural requirement for an article 191 action: require the mother to first establish her present husband's paternity by clear and convincing evidence *before* allowing her to contest the presumption that her former husband is the child's father.

the child is filiated to no man, no prescriptive or peremptive period applies to a father's ability to establish paternity to the child under article 198.¹⁷⁸ Therefore, the mother's present husband, should he be the biological father, can bring an action. Similarly, under article 197, the child can institute an action to determine paternity without temporal limitation.¹⁷⁹ Incidentally, if the child is a minor, it is indeed the mother who, serving as the child's representative, brings the action on the child's behalf.¹⁸⁰ The mother thus again finds herself in a position to influence rights and obligations owed to her child and by whom they are owed.

VI. CONCLUSION

Returning to the case of the Alabama woman with which this comment began—involving a mother, her husband, a three-year-old child, and a biological father uninterested in a relationship with the child—an understanding of Louisiana's new legislation conveys that a similar, unsuccessful fate would befall her were she to bring her action here. The Alabama court found that Mrs. Cravens lacked standing to challenge the presumption of paternity because her husband, presumed to be the father because Jon Michael was born during the marriage, persisted in claiming paternity of him. In Louisiana, article 191 would provide Mrs. Cravens with standing to bring the contestation action. But she would fail in her cause of action: Jon Michael is too old and has not been acknowledged by his biological father, and Mrs. Cravens has not married his true biological father. The assembly and characteristics of the parties involved in the case demonstrate the narrowness of a Louisiana mother's new right.

In enacting article 191, the Louisiana Legislature has undoubtedly embarked into new legal territory. The law enables a mother to act, but within seemingly stringent restrictions. Initial

178. LA. CIV. CODE ANN. art. 198 (2006).

179. LA. CIV. CODE ANN. art. 197 (2006). The child can bring such an action even if he is presumed to be the child of another man. However, under the same article and for succession purposes only, if the action is instituted after the death of the alleged father, a peremptive period applies, requiring the child to bring the action within one year from the date of death. *Id.*

180. LA. CODE CIV. PROC. ANN. art. 683 (2006).

judicial interpretation of the legislation will greatly affect the scope of a mother's new right, particularly when considering the discretion left to courts concerning the clear and convincing evidentiary standard and the type of evidence sufficient to corroborate testimony. In its wording of the articles, the legislature has seemingly left the courts significant leeway to decide cases in accordance with the best interests of the child. If the clear and convincing evidentiary standard is not intended to be creatively applied to loosen the restrictiveness of the mother's burden of proof, legislators should describe the nature of evidence sufficient to meet the standard. Such guidance would thereby also resolve the issue of whether the contestation and establishment actions demand that the mother offer similar proof. The most significant aspect of the new law, though, is its restrictions, which aim to serve the child. Each requirement demanded of the mother is geared towards aligning the child biologically within an intact family.

Similar to that of the Netherlands and France, Louisiana's new legislation provides a mother with a narrow right to contest the paternity of her child. Despite its limitations, however, article 191 is of great significance in affording a mother a means to rebut the marital presumption and influence the rights and obligations owed to her child and by whom they are owed. The restrictions of the new legislation reflect a continued policy, supported by a wealth of empirical research, favoring stability afforded to a child through the marriage of his biological parents.

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* The author wishes to thank Katherine Shaw Spaht, Jules F. and Frances L. Landry Professor of Law, Paul M. Hebert Law Center, Louisiana State University, for her invaluable guidance and assistance throughout the drafting of this comment.

